

Questionable Constitutional Authority Statement of the Week

May 10, 2012



- **Bill:** H.R. 4090, the Dam Safety Act of 2011
- **Introduced by:** Rep. Russ Carnahan (D-MO)
- **Constitutional Authority Statement:** *"Article I. Section 1. "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.""*

Why this is an inadequate explanation: This statement fails a basic test by providing nothing more than incomplete circular logic. A Constitutional Authority Statement should provide a reason that the particular piece of legislation is constitutional. Article 1, Section 1 merely states that Congress has the power to legislate. Providing this as the only statement of Constitution Authority is akin to arguing 'Congress has the power to pass this particular piece of legislation because it is legislation, which Congress has the power to pass.' If the Constitution simply ended after the first section of the first article and failed to bestow certain powers and limits upon the federal government, this explanation would be sufficient. However it does not, and the statement is not. Citing merely Congress' general power to legislate as the constitutional basis for a particular law is inadequate.

How to fix this statement: A better Constitutional Authority Statement would need to **explain** from where in the Constitution the Congress derives the authority to pass this particular legislation above. It should cite at least one specific clause of constitutional authority, and then should show why the clause is relevant and from where in the Constitution the Congress derives the authority to pass the proposed legislation. These statements should consist of more than a mere reference to a clause (particularly, as in the case above, if the referenced clause is not an adequate one)—they should thoroughly explain the reason that the proposed bill is constitutional.

Example of a Good Constitutional Authority Statement:

H.R. 1212, RECLAIM Act

Rep. Amash (R-MI)

Statement: *"Article I, Section 8, of the United States Constitution states that Congress shall have the power ``To declare War," ``To raise and support Armies," ``To provide and maintain a Navy," and ``To make Rules for the Government and Regulation of the land and naval Forces." Although the Constitution's Article II, Section 2 designates the President as ``Commander in Chief," that title does not empower the President to order congressionally unauthorized force when the United States has not been attacked or is not in imminent danger of attack. This bill reclaims Congress's core constitutional prerogative to control when offensive military force is used."*

****Disclaimer:** The RSC does not necessarily support or oppose the bills listed in these weekly emails;

rather, the bills are selected strictly based on the strength of their Constitutional Authority Statements.**

-To read the current House Rule on Constitutional Authority Statements, click [here](#), and find Rule XII, Section 7(c).

-The Heritage Foundation has created an online guide to the Constitution, which provides an explanation and discussion of every clause. To see this online guide, go [here](#).

-To see previous "Questionable Constitutional Authority Statements," as well as advice for drafting your office's Constitutional Authority Statements, go [here](#).

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